

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)	CASE NO.	05-14511
)	CHAPTER	13
MARK A. ROGERS)	REG/tp	
SUZANNE R. ROGERS)		
)		
Debtor(s))		

DECISION AND ORDER ON MOTION TO RECONSIDER
AND MOTION TO EXTEND TIME

At Fort Wayne, Indiana, on March 20, 2006

By an order issued on February 22, 2006, the court denied confirmation of debtors' proposed chapter 13 plan. That order went on to direct that any further plan had to be filed within fourteen days and if the debtors failed to do so, or if that plan could not be confirmed, this case would be dismissed, without further notice or hearing. Rather than complying with the court's order and filing an amended plan, on the very date that plan was due, debtors' counsel filed a motion to reconsider the court's order. The motion is based upon Rule 60(a) of the Federal Rules of Civil Procedure and suggests that the order which the court entered in this case was actually supposed to have been entered in another case, Case no. 05-14565, Matter of Johnson, that was heard on the same day. As a result, the court has been asked to correct the mistake by entering the order from the Johnson case in this case.¹

Despite the requirements of the local rules of this court, the motion to reconsider was not accompanied by a brief or any other materials in support thereof, such as a transcript from the

¹The order in the Johnson case was issued on February 23, 2006 and directs the debtors and trustee to file an agreed immaterial modification to the proposed plan which would be approved and the plan, as so modified, confirmed without further notice or hearing. Both the Johnsons and the Rogers are represented by the same attorney.

hearing which would indicate precisely what had taken place and precisely what the court's ruling had been. See, N.D. Ind. L.B.R. 9023-1(a).² Despite this obvious insufficiency, the court took the initiative to review its internal recordings of the proceedings. Doing so, reveals that the order which was entered in this case accurately reflects the court's ruling and the order it said would be entered. Consequently, there was no clerical error and there is no basis under Rule 60(a) to reconsider or set aside the order of February 22, 2006. See, Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2854 ("a motion under Rule 60(a) can only be used to make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced.").

Debtors also filed a motion for an extension of time to comply with the court's order concerning the submission of an amended plan. The only basis for this request is the pendency of their motion to reconsider. They have asked for fourteen days from the date of the court's ruling on that motion within which to file the amended plan – a plan the court had ordered to be filed within fourteen days of February 22, 2006. Nothing in the motion suggests that fourteen days was not a reasonable time within which the court could expect the submission of a further plan or that, for one reason or another, counsel was not able to comply with that deadline. The only reason seems to be that, since the debtors have asked the court to reconsider its order, they should not have to comply with that order until after the court has ruled. The court does not regard this as sufficient cause for

²The failure to file a brief and other materials in support of the motion is not the only example of counsel's failure to observe the requirements of the local rules of this court in connection with this particular matter. Counsel served a notice of its motion and an opportunity to object thereto upon creditors advising them that they were required to file an objection to the motion on or before March 28, 2006. Post-judgment motions, such as the one in question, are not subject to this type of procedure. Local bankruptcy rule B-2002-2 specifically identifies the various motions the court will consider without a hearing absent a timely objection and post judgment motions are not among them. See, N.D. Ind. L.B.R. B-2002-2(a)(1)-(24). Quite to the contrary, "unless otherwise ordered by the court, no response to [a post-judgment] motion is required." N.D. Ind. L.B.R. B-9023-1(b). Consequently, there is no basis for the notice counsel served upon creditors or the supposed deadline for filing objections that it contained. As such, both the notice and the deadline may be disregarded.

an extension of time. This is particularly so given the motion to reconsider's lack of merit, something which would have been apparent had counsel procured a transcript of the hearing and reviewed it prior to filing the motion.³ As a result, the court finds that there is not sufficient cause to grant the debtors' motion for an extension of time to comply with the court's order of February 22, 2006.

Debtors' motion to reconsider the court's order of February 22, 2006 and for an extension of time to comply with that order are DENIED and that order will be enforced according to its terms.

SO ORDERED.

/s/ Robert E. Grant

Judge, United States Bankruptcy Court

³Debtors were represented by local counsel at the hearing. The attorney who filed the motion to reconsider was not the attorney who appeared at the hearing and so would have no direct knowledge as to what had transpired.